

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-6149

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

LUIS M. GRULLON,

Plaintiff-Appellant,

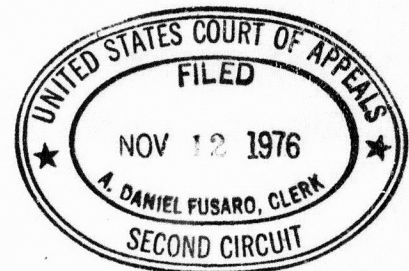
v.

HENRY A. KISSINGER, Secretary of State :
of the United States, JULIO ARIAS, :
Director of the Visa Office in the :
Department of State of the United :
States, and EVELYN A. WYTHER, Vice :
Consul of the United States at Santo :
Domingo, Dominican Republic;

Defendants-Appellees.

-----X

Docket No. 76 - 6149



APPENDIX TO APPELLANT'S BRIEF

NOVEMBER, 1976

ANTONIO C. MARTINEZ
324 W. 14th Street
New York, N.Y. 10014
Telephone: (212) 989-0404

PAGINATION AS IN ORIGINAL COPY

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COMPLAINT

(Filed Feb. 13, 1975)

Plaintiff, by his attorney, alleges upon information and belief except as to paragraph 1 which plaintiff alleges upon knowledge

1. Plaintiff LUIS M. GRULLON (Luis) is a legal permanent resident of the United States. His Alien Registration number is A 30 154 112. Grullon's address is 46 Varet Street, Brooklyn, New York 11206.

2. Defendant Henry A. Kissinger is Secretary of State of the United States and he is charged with the administration and enforcement of the immigration and nationality laws of the United States.

3. Defendant JULIO ARIAS is Director of the Visa Office in the Department of State of the United States. The Visa Office supervises and controls the visa issuing procedures of American Consulates abroad. The Visa Office's interpretation of the law is binding on Consular officers.

4. Defendant EVELYN A. WYTHE is a Vice Consul of the United States at Santo Domingo, Dominican Republic. Defendant Wythe is also charged with the issuance of immigrant visas at that consular post.

5. This is an action for a declaratory judgment pursuant to 28 U.S.C. Sections 2201 and 2202 to declare (a) that LUIS M. GRULLON is the son of MARTIN GRULLON (b) that Section

101(b)(1)(D) of the Immigration and Nationality Act of 1952, 8 U.S.C. Sec. 1101(b)(1)(D) is unconstitutional inasmuch as it favors mothers over fathers.

6.(a) On February 20, 1974 defendant Evelyn A. Wythe denied an immigrant visa to GRULLON's father, Martin on the alleged ground that Martin is not Luis' father; Exhibit 'A'

(b) In truth and in fact, Martin had legitimated Luis as his son at the time of Luis' birth in the Dominican Republic. Such legitimation was made pursuant to Law 985 of the Dominican Republic. Exhibit 'B'

7.(a) Defendant Evelyn A. Wythe is, or should be bound by the customs and usages of international comity to give effect to the laws of the Dominican Republic when making her decisions whether or not to issue an immigrant visa pursuant to Sec. 221 of the Immigration and Nationality Act of 1952;

(b) Defendant Wythe has failed to do so when considering the immigrant visa application of Luis' father, Martin.

(c) Defendant Wythe has failed to seek and obtain from defendant ARIAS rulings on the law applicable to the Immigrant visa application of Martin, Luis' father.

8.(a) No review of defendant Wythe's decision is or could be had before the Visa Office of the Department of State of the United States, or before any other agency superior to defendant Wythe;

(b) Any attempt to have defendants Henry A. Kissinger and Julio Arias review the action of defendant Wythe would be

futile and to no avail.

WHEREFORE plaintiff demands:

A. Judgment declaring that plaintiff LUIS M. GRULLON is the legitimated son of MARTIN GRULLON.

B. Judgment declaring that Sec. 101(b)(1)(D) is unconstitutional to the extent that it prohibits the conferring of immigration benefits by plaintiff LUIS M. GRULLON upon his father MARTIN GRULLON.

C. Judgment commanding defendant Evelyn A. Wythe to process the Immigrant visa application of Martin Grullon upon the basis of the judgment sought under (B).

D. Judgment for such other and further relief as to the Court may seem just and proper including the award of the costs and disbursements of this action.

CONSULAR SECTION
Santo Domingo, Dominican Republic

February 20, 1974
(date)

This office regrets to inform you that it is unable to issue a visa to you because you have been found ineligible to receive a visa under the following section(s) of the Immigration and Nationality Act, as amended:

☐ Section 212 (a) (14)

Your son, who is petitioning for you, is not legitimate.

which prohibits the issuance of a visa to anyone who wants to work in the United States and is not exempt of the labor certification requirements under this section, or don't have a labor certification approved by the Department of Labor of the United States.

☐ Section 212 (a) (15)

which prohibits the issuance of a visa to anyone likely to become a public charge.

☐ Section 221 (g)

which prohibits the issuance of a visa to anyone whose application does not comply with the provisions of the Immigration and Nationality Act or regulations issued pursuant thereto.

☐ Section

Further consideration will, however, be given to your visa application if you obtain and present to this office the following:

If there are items indicated above, you should present them before the last working day of this month. If you are unable to present to this office the additional documentation during this month, please see back of this page and forward them to this Embassy as soon as you have the additional documents or the missing ones.

The Embassy will keep your application open for a period of 120 days. If you do not get your visa within this period, will be necessary for you the fill another application and pay another fee.

Very truly yours,

/s/ EVELYN A WYTHE

American Consul

Form FS-290A

I, LIRIO RODRIGUEZ

HEREBY CERTIFY THAT I AM AN EMPLOYER AND SOLEMNLY PLEDGE TO THE STATES AND HAVE NOT WAIVED THE WHOLE COMPLETELY AND ACCORDINGLY

Stamp: Evelyn A. Wythe
Vice Consul of the United States of America.

-4a-

DATE: FEB 11 1975

Lirio Rodriguez

EXHIBIT 'A'

GRULLON, Martin

Sección Consular
Santo Domingo, República Dominicana

February 20, 1974
(fecha)

Esta oficina lamenta informarle a usted no poder expedirle una visa por encontrarle inelegible para recibir una visa bajo la(s) sección(es) del Acto de Inmigración y Nacionalidad marcada(s) abajo:

☒ Sección 212 (a) (14) que prohíbe expedir una visa de residencia a toda persona que aiese trabajar en los Estados Unidos y no esté exento de los requisitos de la certificación de trabajo de esta sección, ni tenga una certificación de trabajo aprobada por el Departamento de Trabajo de los Estados Unidos.
Su hijo que le pidió no es legítimo

☐ Sección 212 (a) (15) que prohíbe expedir una visa de inmigrante a toda persona que pueda convertirse en carga pública.

☐ Sección 221 (g) que prohíbe expedir una visa a toda persona cuya solicitud no cumpla con las disposiciones del Acto de Inmigración y Nacionalidad de los Estados Unidos o regulaciones hechas de acuerdo al mismo.

☐ Sección

Sin embargo, nueva consideración se le dará a su solicitud de visa si usted obtiene y presenta a esta oficina lo siguiente:

Si algo le ha sido requerido en el párrafo anterior, debe presentarlo a esta oficina a más tardar el último día laborable de este mes. Si no le es posible presentar a esta oficina la documentación adicional durante este mes, vea la parte atras de este aviso y envíelo a esta Embajada tan pronto tenga los documentos adicionales o que le faltaron en su poder.

La Embajada reservará su solicitud abierta por un período de 120 días. Si no obtiene su visa dentro de este tiempo, será necesario que llene y pague una nueva solicitud.

Atentamente

Evelyn A. Wythe

Consul de los Estados
Unidos de America

Form FS-290A
4-70

EVELYN A. WYTHE
Vice Consul of the United
States of America

TRANSLATION FROM SPANISH TO ENGLISH

COAT OF ARMS

Dominican Republic
Office of the Civil Registrar

No. 81

Second Circumscription

ENIO RAFAEL PEREZ ROMERO: Civil Registrar of the Second Circumscription of the Municipality of Moca, Province Espaillat, Dominican Republic, CERTIFIES: that in the archives in his custody, in the book No. 68 of year 1946 for birth records, there is an entry registered with the No. 349, Folio No. 149 which states that:-----

"In the city of Moca, Dominican Republic, on May 22, 1946. Before me Luis Rodriguez, Civil Registrar of the community of Moca there appeared Mr. Martin Grullon, 21 years of age, farmer, domiciled in Villa Trina, and declared to me said declarant that on March 10, 1946 there was born in Villa Trina, section of this community, at eleven o'clock P.M., a boy child, to whom has been given the name LUIS MANUEL, natural son of the declarant Grullon, who acknowledge him, and Mrs. Ramona Torres, 18 years of age, homemaker, domiciled in Villa Trina. I attest; Luis Rodriguez, Civil Registrar."-----

The present certification is issued at the request of the interested party in the city of Moca, principal municipality of the Province Espaillat, Dominican Republic, on April 9, 1974.-----

(signed) Enio Rafael Perez Romero
Civil Registrar
of the Second Circumscription

Seal: Office of the Civil
Registry, Moca, D.R.

Internal Revenue Stamp(2):

#481 177 DR\$1.00 9-4-74 E.R.P.R.
#0358711 DR\$0.50 9-4-74 E.R.P.R.

J. LIRIO RODRIGUEZ

ATTENDANT OFFICE THAT I AM AN EXPERIENCED
AND CAPABLE PERSON IN THE FIELD OF
AND I HAVE BEEN THE WITHIN COMPLETELY
AND ACCURATELY.

DATED: FEB 7 1975

SIGNED: *Lirio Rodriguez*



REPUBLICA DOMINICANA
OFICIALIA DEL ESTADO CIVIL

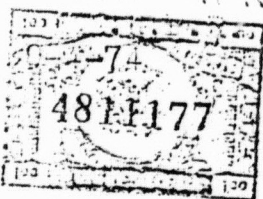
Núm. 31.-

SEVEN DA CIRCUNSCRIPCION

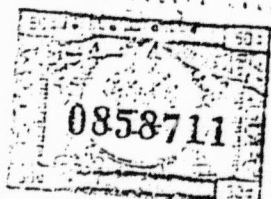
ELIO RAFAEL PEREZ ROMERO; Oficial del Estado Civil de la Segunda Circunscripción del Municipio de Moca, Provincia Espaillat, República Dominicana, CERTIFICA: que en los archivos a su cargo, en el libro No. 68 para el año 1946, destinado al asiento de actas de nacimientos, hay una partida con el No. 349, dentro del folio No. 149, donde consta que: -----

" En la ciudad de Moca, República Dominicana, a los veintidos días del mes de mayo del año mil novecientos cuarenta y seis. Por ante mí Luis Rodríguez, Oficial del Estado Civil de la comuna de Moca, compareció el señor Martín Grullón, de veintinueve años de edad, agricultor, domiciliado en Villa Trina, me ha declarado el dicho con acreciente: que en día DUECE del mes de MARZO del año mil novecientos cuarenta y seis, nació en Villa Trina, sección de esta comuna, a las once horas de la noche, un niño de sexo masculino, a quien se le han dado los nombres de LUIS RAFAEL, hijo natural del señor Jacinto Grullón, que lo reconoce, y de la señora Ramona Torres, de dieciocho años de edad, casera, domiciliada en Villa Trina. Doy fé; Luis Rodríguez, Oficial del Estado Civil. " -----

La presente certificación se expide a solicitud de parte interesada, en la ciudad de Moca, Municipio de Moca, Provincia Espaillat, República Dominicana, a los DIECIOCHO días del mes de mayo del año 1974: -----



E.R.P.R.
9-4-74
#4811177
RD\$1.00



E.R.P.R.
9-4-74
#0858711
RD\$0.50

Elío Rafael Pérez Romero
Oficial del Estado Civil de la
2da. Circunscripción

Moca, R. D.

EXHIBIT 'B'

ANSWER

(Filed May 14, 1975)

The defendants, by and through their attorney David G. Trager, United States Attorney, Eastern District of New York, answering plaintiff's complaint upon information and belief, allege as follows:

FIRST: Admit the allegations contained in the first sentence of paragraph 3, and paragraphs 4, 6(a) and 8 of the complaint.

SECOND: Deny the allegations contained in paragraphs 6(b), 7(b), and 7(c) of the complaint.

THIRD: Answering the allegations contained in paragraph 2 of the complaint, deny that defendant Kissinger is charged with the administration and enforcement of the law as relates to the granting of visas.

FOURTH: Answering the allegations contained in the second and third sentences in paragraph 3 of the complaint, deny that the Visa Office controls the visa issuing procedures of American Consulates abroad and that Consular officers are legally bound by the visa office's interpretations of the law.

FIFTH: The allegations set forth in paragraph 5 of the complaint set forth matters of law that are respectfully referred to the court. Insofar as the allegations therein are meant to set forth substantive claims, defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 5(a) and deny the allegations

in paragraph 5(b) of the complaint.

SIXTH: Answering the allegations contained in paragraph 7(a) of the complaint, defendants allege that the decision of the Consul was consistent with the applicable laws of the Dominican Republic.

AS AND FOR A FIRST COMPLETE
AND SEPARATE DEFENSE,
DEFENDANTS ALLEGE

SEVENTH: The court lacks jurisdiction over the subject matter of this action.

AS AND FOR A SECOND COMPLETE
AND SEPARATE DEFENSE, DEFENDANTS
ALLEGE

EIGHTH: The complaint fails to state a claim upon which relief can be granted.

AND FOR A THIRD COMPLETE AND
SEPARATE DEFENSE, DEFENDANTS
ALLEGE

NINTH: The decision of the United States Consul for the Dominican Republic to deny a visa to LUIS M. GRULLON was neither arbitrary nor capricious, and was supported by the law and by substantial evidence.

WHEREFORE, defendants pray that plaintiff's complaint be dismissed and that they be awarded costs and expenses of this action.

DEFENDANT'S REQUEST FOR ADMISSION OF FACTS

(Filed July 15, 1975)

Defendants hereby request the plaintiff, within 30 days after service of this request, to admit, for the purpose of this action only, the truth of the following facts:

1. Plaintiff Louis M. Grullon was born on or about March 10, 1946.
2. Plaintiff's mother was Ramona Torres.
3. Plaintiff's father was Martin Grullon.
4. At the time of plaintiff's birth, his mother and father were not married to each other.
5. On or about May 22, 1946 Martin Grullon "recognized" or "legitimated", as the case may be, the plaintiff pursuant to Law 985 of the Dominican Republic.
6. On or about December 8, 1954, Martin Grullon married Ercida Almonte.
7. At no time has Martin Grullon, the plaintiff's father, ever been married to the plaintiff's mother.
8. On or about February 20, 1974 Martin Grullon was refused an immigrant visa on the ground that his resident son, plaintiff herein, was never legitimated, that therefore Martin Grullon is not the "father" of the plaintiff within the meaning of the Immigration and Naturalization Act, and that therefore Martin Grullon is not exempt from the labor certificate requirements of Section 212(a)(14) of the Immigration and Naturalization Act as the father of a lawful resident alien.

PLAINTIFF'S ANSWERS TO DEFENDANTS' REQUEST FOR ADMISSION OF FACTS
(Filed July 31, 1975)

Plaintiff, Louis M Grullon by his attorney, for his answers to Defendants' Request for Admission dated July 14, 1975:

1. Admits that plaintiff was born on or about March 10, 1946.
2. Admits that the name of plaintiff's mother is Ramona Torres.
3. Admits that the name of plaintiff's father is Martin Grullon.
4. Admits that plaintiff's father and mother were not married to each other at the time of plaintiff's birth.
5. Admits that on or about May 22, 1946, Martin Grullon, plaintiff's father, declared the birth of plaintiff and recognized him as his natural son. A copy of such birth certificate is attached hereto as Exhibit 'A'.
6. Admits that on or about December 8, 1954 Martin Grullon married Ercida Almonte. A copy of such marriage certificate is attached hereto as Exhibit 'B'.
7. Admits that Martin Grullon, plaintiff's father, has never married to Ramona Torres, plaintiff's mother.
8. Admits only that on or about February 20, 1974 Martin Grullon, plaintiff's father, was refused an immigrant visa by defendant Evelyn A. Wythe, a Vice Consul of the United States of America at Santo Domingo, Dominican Republic by means of a letter dated February 20, 1974 (a copy of which is attached

. as Exhibit 'C', with translation" but denies each and every other
statement made in such request numbered (8).



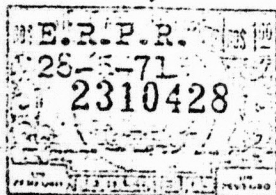
REPUBLICA DOMINICANA
OFICIALIA DEL ESTADO CIVIL
SEGUNDA CIRCUNSCRIPCION

Núm. 172.-

ENIO RAFAEL PEREZ ROMERO, Oficial del Estado Civil de la Segunda Circunscripción del municipio de Moca, provincia Espaillat, República Dominicana, CERTIFICA: que en los archivos a su cargo, en el libro No. 01 para el año 1971, destinado al asiento de actas de declaraciones tardías de nacimientos, hay una partida con el No. 37, dentro del folio No. 37, donde consta que: -----

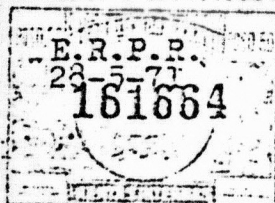
" En la ciudad de Moca, República Dominicana, a los cuatro días del mes de mayo del año mil novecientos setentuno. Por ante mí Enio Rafael Pérez Romero, Oficial del Estado Civil de Moca, compareció el señora Andrea Grullón, de 72 años de edad, Viuda, domiciliada en Sánchez, Majagual Adentro, de Oficios Domésticos, de nacionalidad dominicana, quien es madre del declarado y me ha expuesto dicha compareciente: que el día DIECISIETE del mes de DICIEMBRE del año MIL NOVECIENTOS VEINTE Y CINCO nació en Jamao Aftara, de Moca, a las 8 horas de la mañana, una criatura de sexo masculino, a quien se le ha dado el nombre de MARTIN, hijo natural de la señora declarante. Doy fe: Enio Pérez, Oficial del Estado Civil."

La presente certificación se expide a solicitud de parte interesada, en la ciudad de Moca, municipio cabecera de la provincia Espaillat, República Dominicana, a los 23 días del mes de mayo del año 1971. -----



E.R.P.R.
23-5-71
#2310428
RD\$1.00

Enio Rafael Pérez Romero
Oficial del Estado Civil de la
2da. Circunscripción



E.R.P.R.
23-5-71
#161664
RD\$0.50



*en
unif. 100*

REPUBLICA DOMINICANA
OFICINA CENTRAL DEL ESTADO CIVIL

CERTIFICADO: Que la firma que figura al final del
presente documento es del Sr. *Enio P. Pina*

Oficial del Estado Civil de *San Juan*
Santo Domingo, R. D.

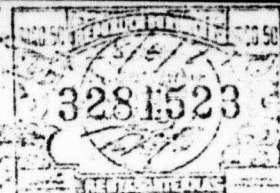
[Signature]
DR. LUIS MANUEL OLLER
SUB-DIRECTOR

019332

No.219



REPUBLICA DOMINICANA
OFICIALIA DEL ESTADO CIVIL



--- "C O P I A A C T A D E M A T R I M O N I O" ---

FERNANDO CAMBERO MOYA: Oficial del Estado Civil del Municipio de Sánchez Provincia de Samaná República Dominicana. CERTIFICA: que en los archivos a su cargo existe una partida registrada con el No. 11 Libro No. 19 Folio # 191, de la cual se extraen los datos siguientes:-

No.11-Acta Matrimonial de los Señores MARTIN GRULLON, Cédula No.20368-54 Sello # 2113799, y ERCIDA ALMONTE Menor, En la Parroquia de Nuestra Señora del Rosario de Sánchez.R.D. Diócesis de La Vega.R.D.El día 8 del mes de Diciembre de mil novecientos 54, previa instrucción de expediente y cumplidos los requisitos Canónicos y legales; el Infrascrito presenció y bendijo el Matrimonio que contrajeron "In Facie Ecclesial" los Señores MARTIN GRULLON, nacido en Moca año mil novecientos 27, hijo natural del Señor Martin Morillo (Finado) y de Andrea Grullon, soltera domiciliada en Majagual Adentro y la Señorita ERCIDA ALMONTE, nacida en Moca el día 1 del mes de Diciembre del año mil novecientos 39, de estado soltera, domiciliada en Las Majaguas, hija legítima de Pedro Maria Almonte y Felicia Amalia Diaz. Fueron testigos de este acto Matrimonial los Señores Pedro Almonte y Eduardo Berroa; Permiso Pedro Maria Almonte Céd-2707-54 Sello #2050305.-Firmaron Martin Grullon y Ercida Almonte.- Parroco Bernardo Ruel.M.S.C. Carlos Guillermo Gabriel. Oficial del Estado Civil.

Y a pedimento de parte interesada expido firma y sella el Infrascrito en la ciudad de Sánchez Provincia de Samaná República Dominicana, á los Veinte y Ocho (28) días del mes de Junio del año mil novecientos Setentitres (1973)

Sello de R.I.

3745304

RD\$ 1.00

28-6-73

F.C.M.

Sello de R.I.

3281523

RD\$ 0.50

28-6-73

F.C.M.



FERNANDO CAMBERO MOYA
Oficial del Estado Civil.

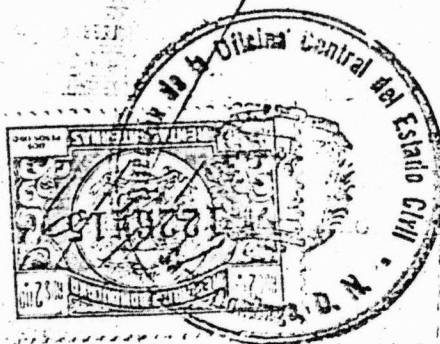
EX HIBIT 'B'
PAGE 1

REPUBLICA DOMINICANA
OFICINA CENTRAL DEL ESTADO CIVIL

CERTIFICO que la firma que figura al final del presente documento es del señor Jose Manuel Combarbo Moya
Oficial del Estado Civil de Sanchez

Santa Domingo, R. D.

Dr. Otto Sosa Aguiar
DIRECTOR



000006

PLAINTIFF'S REQUEST FOR ADMISSION OF FACTS

(Filed August 5, 1975)

Pursuant to Rule 36, F.R. Civ. P., plaintiff by his attorney hereby requests that the defendants admit, within 30 days from the date hereof, that the herein listed documents are genuine and that the matters therein stated are true:

1. Law No. 985 published September 5, 1945 in the official Gazette of the Dominican Republic, substituting Law No. 357.
2. Journal of the Senate of the Dominican Republic dated August 29, 1945.
3. Journal of the House of Representatives of the Dominican Republic dated August 16 - 30, 1945.
4. Law No. 357, published November 2, 1940 substituting for Law No. 121.
5. Journal of the House of Representatives of the Dominican Republic, dated October 23, 1940.
6. Report of the Permanent Commission of Justice of the Senate of the Dominican Republic dated October 17, 1940.
7. Law No. 121 published May 27, 1939.
8. Journal of the House of Representatives dated May 25, 1939.
9. Journal of the Ordinary Session of the Senate of the Dominican Republic of May 22, 1939.
10. Judgment dated March 26, 1965 of the Supreme Court of the Dominican Republic in Brea v. Correa.
11. Legal Vocabulary.

PLAINTIFF'S NOTICE OF MOTION FOR SUMMARY JUDGMENT

PLAINTIFF'S RULE 9(g) STATEMENT

(Filed April 29, 1976)

Sir:

PLEASE TAKE NOTICE that at 10:00 A.M. on May 17, 1976, plaintiff, by his attorney, move this Court (the Honorable Orrin G. Judd, U.S.D.J.), pursuant to Rule 56, F.R. Civ. P., for summary judgment in plaintiff's favor on the ground that there are no triable issues of material fact and that plaintiff is entitled to judgment as a matter of law.

1. Plaintiff Luis M. Grullon, was born on or about March 10, 1946.

2. The name of plaintiff's mother is RAMONA TORRES and the name of plaintiff's father is MARTIN GRULLON. Plaintiff's mother and father were never married to each other.

3. Plaintiff's mother and father were free to marry each other at the time of plaintiff's birth. Exhibit 'A' is the original of an affidavit with translation sworn to by Florentina Torres, a/k/a RAMONA TORRES, plaintiff's mother.

4. On or about May 22, 1946, Martin Grullon, plaintiff's father, declared plaintiff's birth and recognized him as his natural son pursuant to Law 985 of the Dominican Republic.

HENRY A. KISSINGER, et al

Defendants

UNITED STATES CONSULATE)
 SANTO DOMINGO, DOMINICAN REPUBLIC) ss:

FLORENTINA TORRES, actualmente residiendo en Calle Rafael J. Castillo No. 171, Santo Domingo, Republica Dominicana, siendo debidamente jurada, declara y dice:

Yo soy la madre de LUIS M. GRULLON, quien es residente legal de los Estados Unidos de America y cuyo numero de extranjeria segun estoy informada es A30 154 112.

Cuando mi hijo Luis M. Grullon nacio el 10 de Marzo de 1946 yo estaba soltera y libre para hacer matrimonio con su padre Martin Grullon. Yo vivi con el mas de diez años y procreamos en total cuatro hijos: Luis, Antonia, Jose y Sinencio. Nunca celebramos un matrimonio formal.

Martin Grullon, su padre, le declaro el nacimiento de Luis Manuel al Oficial Civil y cuando lo hizo el Oficial Civil, el cometio un error indicando mi primer nombre como Ramona en vez de Florentina. No se como se cometio este error porque toda mi familia en toda mi vida me apodan "Melliza". Este error ha sido corregido en el año 1975 ante el Oficial Civil.

Hago esta declaracion a solicitud de mi hijo

Luis para establecer que mi estado civil era de soltera cuando el nacio.

Dominican Republic
 National District
 City of Santo Domingo de Guzman
 Embassy of the United States
 of America

Florentina Torres

Subscribed and sworn to before me this 6th day of FLORENTINA TORRES.
 April, 1976.

H. H. Buzbee
 H. H. Buzbee
 Consul of the United States of America.

EXHIBIT No. A

LOUIS M. GRULLON,

Plaintiff

V.

75 C223

HENRY A. KISSINGER, et al

Defendants

UNITED STATES CONSULATE) ss.:
SANTO DOMINGO, DOMINICAN REPUBLIC)

FLORENTINA TORRES, presently
residing on No. 171 Rafael J. Castillo Street, being duly sworn,
declares and says:

I am the mother of LUIS M. GRULLON,
who is a legal resident of the United States of America and whose Alien
Registration No., as I am informed, is A30 154 112.

When my son, Luis M. Grullon, was
born on March 10, 1946, I was single and at liberty to marry his father,
Martin Grullon. I lived with him for more than 10 years and we had,
in total, four children: Luis, Antonia, Jose and Sinencio. We never
had a formal marriage ceremony.

Martin Grullon, his father, declared
the birth of Luis Manuel before the Civil Clerk and when the Civil Clerk
entered it, he made a mistake, indicating my name as Ramona instead of
Florentina. I do not know how he made this mistake, because my entire
family, all my life, called me by the nickname of "Melliza". This
error has been corrected in 1975, before the Civil Clerk.

I am making this statement at the
request of my son Luis in order to establish that my civil status was
single when he was born.

Stamp:
Dominican Rep.
National District
City of Sto. Domingo de Guzman
Embassy of the United States
of America

s/Florentina Torres.

Subscribed and sworn to before me this 6th day of
April, 1976.

s/H.M. Buzbee
Consul of the U.S.A.

I, RITA BELDOCK
HEREBY CERTIFY THAT I AM AN EXPERIENCED
AND COMPETENT BILINGUAL TRANSLATOR AND
HAVE TRANSLATED THE WITHIN COMPLETELY
AND ACCURATELY.

DATE: 4/13/76

SIGNED: Rita Beldock

Exhibit A, Translation

DEFENDANT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT

(Filed June 4, 1976)

S I R :

PLEASE TAKE NOTICE that at 10:00 A.M. on June 4, 1976, defendant will move this Court (the Honorable Orrin G. Judd, U.S.D.J.), pursuant to Rule 56, F.R. Civ. P., for summary judgment in defendant's favor on the ground that there are no triable issues of material fact and that defendant is entitled to judgment as a matter of law.

DEFENDANT'S RULE 9(g) STATEMENT

(Filed June 4, 1976)

Defendant contends that the following are material facts as to which there is no genuine issue to be tried.

1. Plaintiff, Luis M. Grullon, was over the age of twenty-one at the time of Martin Grullon's petition for a visa.
2. Plaintiff was married at the time of Martin Grullon's petition for a visa.
3. On February 20, 1974, Martin Grullon's petition for a visa was denied by the American Consul in the Dominican Republic.

DEFENDANT'S COUNTER STATEMENT TO PLAINTIFF'S RULE 9(g) STATEMENT

(Filed June 4, 1976)

Defendant contends that the following is a material fact to which there exists a genuine issue to be tried:

Plaintiff has not demonstrated that he was in his father's custody at the time of acknowledgment. This requirement is a sine qua non for legitimation pursuant to 8 U.S.C. Sec. 1101(b)(1)(c).

MEMORANDUM AND ORDER BY PRATT, J., GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

(Dated July 20, 1976 and filed July 21, 1976)

Plaintiff, a legal permanent resident of the United States, brought this action to further the efforts of his natural father, Martin Grullon, to obtain an immigrant visa. Martin's application was denied on February 20, 1974 by defendant Wythe, acting as Vice-Consul of the United States at Santo Domingo, Dominican Republic. The stated reason for denial was: "Your son, who is petitioning for you, is not legitimate."

Both sides have moved for summary judgment, and there appears to be only one disputed fact issue -- in 1946 when Martin formally acknowledged Luis as his son, was Luis in Martin's custody? In view of the disposition below, however, an answer to this dispute is immaterial, so that summary judgment is appropriate here.

Luis was born in the Dominican Republic on March 10, 1946. Although his mother, Ramona Torres, never married Luis' father, Martin Grullon, at the time of Luis' birth they were free to marry each other. Martin and Ramona had other children, but in 1954, Martin married Ercida Almonte.

Within two weeks of Luis' birth, Martin, by formal instrument, acknowledged Luis as his son, a procedure claimed by Luis in this action to constitute legitimation under Law 985 of the Dominican Republic. Notwithstanding that acknowledgment,

defendant Vice-Consul refused Martin's visa on the ground that Luis was not the legitimate son of Martin.

The object of this action, which has been brought by Luis, the son, is to require the Vice-Consul to issue a visa to Martin, the father. Plaintiff's claims on the merits are (1) the Vice-Consul's determination that Luis was not the legitimate son of Martin was the result of an erroneous interpretation and application of the Immigration and Nationality Act and of Law 985 of the Dominican Republic, and (2) even if the Vice-Consul's determination of illegitimacy was correct, refusal of a visa on that ground is an unconstitutional sex discrimination, since the underlying statute (8 U.S.C. Sec. 1101(b)(1)(D) invidiously favors mothers over fathers.

In opposition, the Government contends: (1) the Court may not review the Vice-Consul's denial of the visa; (2) the determination of illegitimacy was correct; and (3) the underlying statute is constitutional.

In Kleindienst v. Mandell, 408 U.S. 753 (1972), the Supreme Court reviewed again the extent of judicial review which may be applied in the immigration area. After reviewing some of the applicable history and pointing out the peculiarly political nature of problems pertaining to the entry of aliens, the majority concluded:

"In summary, plenary congressional power to make policies and rules for exclusion of aliens has long been firmly established. In the case of an alien excludable under Sec. 212(a)(28), Congress has delegated

conditional exercise of this power to the Executive. We hold that when the Executive exercises this power negatively on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the first amendment interests of those who seek personal communication with the applicant." (408 U.S. at pp. 769-770).

In Mandell, review of the Government action had been sought directly by the visa applicant jointly with legal residents who sought Mandell's temporary presence in this country. Governmental exclusion of Mandell was challenged on the ground that it restricted the co-plaintiffs' first amendment rights to confer with Mandell.

Plaintiff here seeks to distinguish Kleindienst v. Mandell, supra, on the ground that he is not reviewing consular action, but seeks merely a preliminary declaration of Martin's immigrant status. Plaintiff claims that jurisdiction lies under Sec. 279 of the Immigration and Nationality Act of 1952, 8 U.S.C. Sec. 1329. Similar attempts to obtain judicial review of the denial of a visa under Sec. 279 have been rejected recently in Diaz* v. Kissinger, ____ F.2d ____, decided 4/14/76, case # 899, CA 2; DePena v. Kissinger,** ____ F. Supp. ____, SDNY 3/2/76; and Burrafato v. Department of State, 523 F.2d 554 (CA 2, 1975).

Leaning in the other direction is Fiallo v. Levi, 406 F. Supp. 162 (EDNY 1975), in which a three judge district court found jurisdiction under Sec. 279, pointing out that the petition there had not been an application for a visa, but for

a preliminary declaration of immigrant status. The Court there stated:

"We will not extend consular non-reviewability, insofar as that rule has been recognized, beyond the actual grant or denial of a visa. This is predicated upon our reluctance to insulate entirely the action of any public official from judicial scrutiny, and thereby foreclose a group of plaintiffs from seeking relief in the courts." (406 F. Supp. at P. 165)

I cannot agree with plaintiff that the action here can be maintained under a theory of preliminary declaration of immigrant status. In the first place, the complaint alleges denial of the visa to Martin, and a copy of the denial was annexed to the complaint. The prayer for relief seeks a declaration that the consul's determination of legitimacy was erroneous, or that the legitimacy standard is unconstitutional. In addition, plaintiff, in effect, demands a judgment directing issuance of the visa. In short, although the action has been brought by the resident son, its purpose and intent clearly and solely is to compel issuance of a visa to the non-resident father.

Furthermore, the Court has considerable doubt as to the validity of the distinction drawn by the Court in Fiallo. That Court's "reluctance to insulate entirely the action of any public official from judicial scrutiny" is shared by this Court and, indeed, by practically every Court which has considered the immunity apparently granted to consular officials from review of their visa denials. Nevertheless, the status which plaintiff seeks to have declared is the key element in whether his father's

visa should or should not be granted. Moreover, the visa for which plaintiff claims to seek a "preliminary" declaration of status, has already been denied on the basis of the consul's own determination of status. No independent reason for determining that status has been offered. Finally, the Second Circuit's decision in Gomez v. Kissinger, supra, seems dispositive here. In that case, plaintiff sought, among other things, what also appears to be a declaration of status, namely, that her marriage was valid. If so, then, she argued, the consul's denial of her husband's application for an immigrant visa on the basis of the invalidity of the marriage should be enjoined. The district court granted summary judgment for the defendants and dismissed the action, holding that the Court lacked "jurisdiction to review the acts of American consular officials abroad in determining whether or not to issue a visa."

On appeal, the plaintiff there, as here, argued that Sec. 279 of the Immigration and Nationality Act of 1952 conferred jurisdiction. The Court affirmed the dismissal, stating that the prior decisions in Kleindienst v. Mandell, supra; DePena v. Kissinger, supra and Burrafato v. U.S. Department of State, supra precluded any judicial review of the consular decision not to issue the visa. The Second Circuit expressly stated: "We reject the argument that Sec. 279 authorizes the sort of judicial interference in the visa-issuing process sought by plaintiff." Significantly, for our purposes, that decision was handed down more than four months after the three judge court's decision in Fiallo v. Levi, supra.

In view of the foregoing, this Court is constrained to find that it lacks jurisdiction to review the consular act described in the complaint. Accordingly, no decision can be made on the substantive issues raised; defendants' motion for summary judgment is granted, and plaintiff's motion for summary judgment is denied.

SO ORDERED.

* 534 F.2d 519 (C.A.2, 1976)

** 409 F. Supp. 1182 (S.D.N.Y., 1976)

NOTICE OF APPEAL

(Filed Sept. 17, 1976)

Notice is hereby given that plaintiff LUIS GRULLON hereby appeals to the United States Court of Appeals for the Second Circuit from Judge Pratt's Order, filed July 20, 1976, dismissing the complaint herein and from the judgment entered thereon, filed July 22nd, 1976.